

S.B. CIVIL WRIT PETITION NO.61/2003
State of Rajasthan & Ors.
VS
Surendra Kumar & Anr.

DATE OF ORDER : - 2.7.2007

HON'BLE MR.PRAKASH TATIA,J.

Mr. Rameshwar Dave, Dy. GA.
Mr. H.S. Shekhawat, for the respondent no.1

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Heard learned counsel for the parties.

The learned labour court, Bikaner vide its order dated 13th July, 2001 answered the reference in faovur of the respondent employee and held that the respondent employee was entitled to be declared semi permanent on the post of Store Munshi w.e.f. 7.1.1985 and was entitled to be declared permanent after 10 years of service. Denial of said benefit to the employee was wrong and the employee was found eligible for all the consequential benefits.

The contention of petitioner employer is that respondent employee was appointed as work charged employee only and he could not have been appointed either on the post of LDC or Store Munshi as for that appointment could have been made only through Public Service Commission. It is also submitted that the petitioner by doing some work, which is assigned to LDC or Store Munshi, his nature of employment cannot change. It is also submitted that

originally the matter was referred to the learned labour court to decide whether the respondent employee was entitled to the relief as LDC but it was amended by the words "Store Munshi" and, therefore, the respondent's claim was for the purpose of Store Munshi. That post is also equivalent to the post of LDC and for that purpose also, the process of regular selection was not followed for appointment of the respondent and that fact also shows that respondent was appointed only as work charged employee and governed by the Work Charge Rules only. The petitioner has placed on record the copy of the claim petition submitted by the respondent before the learned labour court and copy of the reply filed before the learned labour court by the petitioner and copy of the impugned award dated 13th July, 2001.

It appears from the impugned award dated 13th July, 2001 itself that the learned labour court directed the employer to show all the record to the employee when the employee respondent submitted an application on 1st Sept., 2000 for summoning of the entire record from the employer. The learned labour court further directed the employer and the concerned Asstt. Engineer to submit affidavit and disclose whether the employee was discharging all the duties of Store Munshi or not. Despite this, the employer refused to give copies of the record to the employee. The employer further did not submit any affidavit as directed by the learned labour court. The learned labour court drawn adverse inference against the

employer and relied upon the voluminous documentary evidence produced by the employee, which clearly show that since his time of appointment, the respondent-applicant-employee was doing the work of Store Munshi. Not only this, the employer even did not deny documents produced by the employee, which were marked as Ex.W-1 to W-33.

In that fact situation when the award passed by the learned labour court is based on documentary evidence as well as has been passed because of suppression of the documentary evidence by the employer, I do not find any reason to interfere in the said award dated 13th July, 2001 while exercise jurisdiction under Article 227 of the Constitution of India.

Hence, the writ petition of the petitioner is dismissed devoid of any merit. However, it is order that if the petitioner employer now makes the payment within a period of three months from today in pursuance of the award to the respondent employee, then they shall not be liable to pay the interest as awarded by the learned labour court.

(PRAKASH TATIA), J.

c.p.goyal/-